SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1037

HUDSON COUNTY NEWS COMPANY, INC., a domestic corporation,

Plaintiff-Appellant.

vs.

ARTHUR J. SILLS, as Attorney General of the State of New Jersey, BRENDAN T. BYRNE, as Prosecutor of Essex County, JAMES A. TUMULTY, JR., as Prosecutor of Hudson County, and the STATE OF NEW JERSEY,

Defendants-Respondents.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

REPLY TO MOTION TO DISMISS.

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Reply to Respondents' Argument that there are no Substantial Federal Questions Involved.

The cornerstone of respondents' argument is the statement that "The statute in question is not 'obscenity' legislation" (R.B. 6, 7 and 14).

This position is completely contrary to the record. The following facts, uncontested by the respondents (p. 5a) sustain the opposite position; that the statute in question is obscenity legislation.

(1) The statute, in its original form, was drafted and recommended by *The Commission to Study Obscenity in Certain Publications* (A-2). After the original bill was vetoed by the Governor of New Jersey, it was amended, and enacted in its present form (pp. 83, 84a).

(2) The Statement accompanying the Statute stated its purpose as ". . . to prevent distributors from disseminating the increasing supply of *obscene publications* . . ." (p. 62a) (Emphasis added), and concluded that ". . . it is a hardship upon the retailer when material he finds unacceptable for sale by reason of its *obscene content or cover* . . ." is delivered to him (pp. 61a, 81a) (Emphasis added).

(3) The Hudson County Prosecutor, respondent, held a public meeting, described by him as ". . . a conference of the clergy lay representatives, retail dealers and distributors relative to the new laws of the State of New Jersey concerning *obscene publications* . . ." (A-4) (Emphasis added). One of the principal speakers at that meeting, Harold Ruvoldt, was announced in writing as Deputy Attorney General of New Jersey, Hudson County *Division to Deter and Eliminate Obscene Literature*" (p. 66a) (Emphasis added).

(4) Respondents, in their own brief, admit that this statute deals with obscenity:

> "In addition there is an obscenity regulation aspect to the legislation for continued receipt and possession by the retailer of unwanted publications could place him in jeopardy of arrest by police authorities, where the publications are deemed to have crossed the border into obscenity" (R.B. p. 17).

(5) The Supreme Court of New Jersey, in its decision, stated that "There is no doubt that the original bill was

viewed by its sponsors as an additional weapon in the "arsenal against obscenity" (A-5). The Court found that the Legislature, ". . . was concerned with obscenity and had undoubted power to deal with the subject" (A-9).

The conclusion is inescapable that this statute deals with obscenity. It is equally clear that the Legislature of New Jersey, by failing to limit the application of this statute to obscenity, has unreasonably restricted freedom of the press.

Conclusion.

For the reasons hereinabove set forth, we urge this Court to deny respondents' motion to dismiss, and to note probable jurisdiction of this appeal.

Respectfully submitted,

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